

## INDIVIDUAL CHILD COMPLAINTS

If you believe the Birth to 3 Connections has violated a federal or state regulation, you may file a complaint with **Special Education Programs Part C Coordinator**. Upon receiving your written complaint, an investigation will be completed.

If you disagree with an *early intervention* program consultant and/or agency on the

- (1) identification,
- (2) *evaluation*,
- (3) placement of your child, or
- (4) provision of appropriate early intervention services to your child or family, you have the right to a timely administrative resolution of your concerns.

The administrative resolution process for your concerns may proceed as a COMPLAINT, MEDIATION, or IMPARTIAL DUE PROCESS HEARING. Each process to resolve a disagreement has individual procedures that are followed. Please review the procedures and decide which one would work best for your situation.

### COMPLAINT

A complaint is a written signed statement by an individual or organization, including a complaint filed by an individual or organization from another state, containing a statement that the state Birth to 3 Connections program or a local Birth to 3 Connections program has violated a requirement of federal or state statutes or regulations that apply to a program and a statement of the facts on which the complaint is based.

The violation in question must have occurred not more than one year before the date that the complaint is received by Birth to 3 Connections unless a longer period is reasonable because:

1. The violation in question continues for that child or other children; or
2. The complainant is requesting reimbursement or corrective action for a complaint that occurred not more than three years before the date on which the complaint is received by Birth to 3 Connections program.

In resolving the complaint in which the state Birth to 3 Connections program has found a failure to provide appropriate services, the state Birth to 3 Connections program, pursuant to its general supervisory authority under Part C of the IDEA, must address:

1. How to remediate the denial of those services, including, as appropriate, the awarding of monetary reimbursement or other corrective action appropriate to the needs of the child; and
2. Appropriate future provision of services for all children with disabilities.

The secretary of the Department of Education appoints a complaint investigation team from the state Birth to 3 Connections program. The team may conduct an on-site investigation if it determines that one is necessary. The complaint team shall give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint. The complaint team

makes a recommendation to the secretary, and after reviewing all relevant information, the secretary shall determine whether the complaint is valid. The secretary shall submit a written report of the final decision to all parties involved, including findings of fact, conclusions, and reasons for final decision.

All complaints must be resolved within 60 calendar days after the receipt of the complaint by the secretary as stated in this section. An extension of the 60 day time limit may be granted only if exceptional circumstances exist with respect to a particular complaint.

If a written complaint is received that is also the subject of a due process hearing, or contains multiple issues, of which one or more are part of that hearing, the state Birth to 3 Connection program must set aside any part of the complaint that is being addressed in the due process hearing, until the conclusion of the hearing. However, any issue in the complaint that is not a part of the due process action must be resolved using the time limit and procedures described in this section.

If an issue is raised in a complaint filed under this section that has previously been decided in a due process hearing involving the same parties:

1. The hearing decision is binding; and
2. The state Birth to 3 Connections program must inform the complainant to that effect.

A complaint alleging a failure to implement a due process hearing decision must be resolved by the state Birth to 3 Connections program.

**MEDIATION**

Mediation is an effective way to resolve differences between you and the Birth to 3 Connections program. Mediation is free and conducted by someone who is not employed by the program.

The state shall ensure that procedures are established and implemented to allow parties to disputes involved in the proposal to initiate or change the identification, evaluation or placement of the child or the provision of appropriate early intervention services to the child and the child's family, including matters that arise prior to the filing of a due process hearing, to resolve the disputes through a mediation process.

The mediation procedures must ensure that participation is voluntary on the part of the parties. Mediation may not be used to deny or delay the parent's right to a due process hearing or to deny any other rights afforded under Part C of the Act. It must be conducted by a qualified and impartial mediator who is trained in effective mediation techniques. Mediators are selected on a random basis.

The state Birth to 3 Connections program shall maintain a list of individuals who are qualified mediators and knowledgeable in laws and regulations relating to the provision of appropriate early intervention services. An individual who serves as a mediator may not be an employee of the program or state agency providing services to the child. They must not have a personal or professional conflict of interest. The state will bear the cost of the mediation process.

A person who otherwise qualifies as a mediator is not an employee of a program or state agency solely because he or

she is paid by the state Birth to 3 Connections program to serve as a mediator.

Each session in the mediation process must be scheduled in a timely manner and must be held in a location that is convenient to the parties to the dispute. An agreement reached by the parties to the dispute in the mediation must be set forth in a written mediation agreement.

Discussions that occur during the mediation process must be confidential and may not be used as evidence in any subsequent due process hearings or civil proceedings. The parties to the mediation process may be required to sign a confidentiality pledge prior to the beginning of the process.

If the parties resolve a dispute through the mediation process, the parties must execute a legally binding agreement that sets forth that resolution and that:

1. states that all discussions that occurred during the mediation process will remain confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding arising from that dispute; and
2. is signed by both the parent and a representative of the program who has the authority to bind such program.

A written, signed mediation agreement under this section is enforceable in any state court of competent jurisdiction or in a district court of the United States.

If you choose not to use the mediation process, the program or a state agency providing services to the child may establish procedures to offer you and to the program an opportunity to meet, at a time and location convenient to

you, with a disinterested party, to encourage the use and explain the benefits of the mediation process to you. This party may be under contract with a parent training and information center, community parent resource center established in the state or with an appropriate alternative dispute resolution entity.

### **IMPARTIAL DUE PROCESS HEARINGS**

You or the program may initiate a hearing on any matters relating to the identification, evaluation or placement of your child or the provision of appropriate early intervention services to your child and family.

A parent or program must request an impartial hearing on their due process complaint within two years of the date the parent or program knew or should have known about the alleged action that forms the basis of the due process complaint, or if the state has an explicit time limitation for requesting such a due process hearing under Part C of IDEA, in the time allowed by state law.

The timeline described above does not apply to a parent if the parent was prevented from filing a due process complaint due to:

1. Specific misrepresentations by the program that it had resolved the problem forming the basis of the due process complaint; or
2. The program's withholding of information from the parent that was required under Part C of IDEA to be provided to the parent.

If you are unable to resolve your differences through a resolution session, or the mediation process, a due process

hearing will be held. This hearing is a legal process in which both parties present their differing viewpoints to a hearing officer. The hearing officer writes a finding of fact and decision based on the information presented by both parties.

A party, parent or program, may not have a hearing on a due process complaint or engage in a resolution session until the party, or the attorney representing the party, files a due process complaint that meets the requirements of this section.

A due process complaint notice may be submitted by a parent, program, or an attorney representing either party. It must be submitted to the state Birth to 3 Connections program in writing. The due process complaint notice must include:

1. The name of the child;
2. The address of the residence of the child;
3. The name of the program providing early intervention services to the child
4. In the case of a homeless child or youth (within the meaning of section 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(2)), available contact information for the child, and the name of the program providing early intervention services to the child;
5. A description of the nature of the problem of the child relating to the proposed or refused initiation or change, including facts relating to the problem; and
6. A proposed resolution of the problem to the extent known and available to the party at the time.

The state Birth to 3 Connections program has developed a model form to assist parents in filing a complaint and due process complaint notice.

The program must have procedures that require either party, parent or program, or the attorney representing a party, to provide to the other party a due process complaint (which must remain confidential).

### **RESOLUTION SESSION**

The Birth to 3 Connections program must hold a resolution session within 15 days of receiving notice of the parents' due process complaint, and prior to the opportunity for a due process hearing. The program must convene a meeting with the parents and the relevant member or members of the IFSP team who have specific knowledge of the facts identified in the due process complaint that:

1. Includes a representative of the program who has decision-making authority on behalf of the program; and
2. May not include an attorney of the program unless the parent is accompanied by an attorney.

The purpose of the resolution session is for the parents of the child to discuss their due process complaint, and the facts that form the basis of the due process complaint, so that the program has the opportunity to resolve the complaint.

The resolution session described above need not be held if:

1. The parents and the program agree in writing to waive the meeting; or



2. The parents and the program agree to use the mediation process described in this document.

If the program has not resolved the due process complaint to the satisfaction of the parents within 30 days of the receipt of the due process complaint, the due process hearing must occur and all applicable timelines for a due process hearing shall commence.

Except where the parties have jointly agreed to waive the resolution process or to use mediation, the failure of a parent filing a due process complaint to participate in the resolution meeting will delay the timelines for the resolution process and due process hearing until the meeting is held.

If a resolution to the dispute is reached at the meeting described above, the parent and program must execute a legally binding agreement that is:

1. Signed by both the parent and a representative of the program who has the authority to bind the program; and
2. Enforceable in any state court of competent jurisdiction or in a district court of the United States.

If the parent and the program execute an agreement, either may void the agreement within 3 business days of the agreement's execution.

A successful resolution session ends the Impartial Due Process hearing procedure.

If the resolution session ends without agreement, a hearing officer is appointed and a hearing is scheduled.

The party, parent or program, requesting the due process hearing may not raise issues at the due process hearing that were not raised in the due process complaint unless the other party agrees otherwise.

When a hearing is initiated, the program shall inform you of the availability of mediation. If you are requesting a hearing or request information on any free or low-cost legal services, the program shall inform you of it and any other relevant services available in the area.

At a minimum, a hearing officer:

1. Must not be:
  - a. An employee of any agency or other entity involved in the provision of early intervention services or care of the child; or
  - b. A person having a personal or professional interest that conflicts with the person's objectivity in the hearing;
2. Must possess knowledge of, and the ability to understand, the provisions of IDEA, federal and state regulations pertaining to IDEA, and legal interpretations of IDEA by federal and state courts;
3. Must possess the knowledge and ability to conduct hearings in accordance with appropriate, standard legal practice; and
4. Must possess the knowledge and ability to render and write decisions in accordance with appropriate, standard legal practice.

A person who otherwise qualifies to conduct a hearing under this section is not an employee of the agency solely because he or she is paid by the agency to serve as a hearing officer. The state Birth to 3 Connections program shall keep a list of the persons who serve as hearing officers. The list must include a statement of the qualifications of each of those persons.

Any party to a hearing has the right to:

1. Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities;
2. Present evidence and confront cross-examine, and compel the attendance of witnesses;
3. Prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least 5 business days before the hearing;
4. Obtain a written, or, at the option of the parents, electronic, verbatim record of the hearing; and
5. Obtain written, or, at the option of the parents, electronic findings of fact and decisions.

As a parent involved in the hearing, you have the right to:

1. Have the child who is the subject of the hearing present; and
2. Open the hearing to the public.

A hearing officer may bar any party that fails to comply with the disclosure requirements of this section from introducing the relevant evaluation or recommendation at the hearing without the consent of the other party.

At least 5 business days prior to a hearing, each party shall disclose to all other parties all evaluations completed by that date and recommendations based on the offering

party's evaluations that the party intends to use at the hearing.

The party filing a due process complaint must forward a copy of the due process complaint to the state Birth to 3 Connections program.

The due process complaint required by this section must be deemed sufficient unless the party, parent or program, receiving the due process complaint notifies the hearing officer and the other party in writing, within 15 days of receipt of the due process complaint, that the receiving party believes the due process complaint does not meet the requirements of this section.

Within five days of receipt of the above notification, the hearing officer must make a determination on the face of the due process complaint of whether the due process complaint meets the requirements of this section, and must immediately notify the parties in writing of that determination.

A party may amend its due process complaint only if:

1. The other party consents in writing to the amendment and is given the opportunity to resolve the due process complaint through a resolution session; or
2. The hearing officer grants permission, except that the hearing officer may only grant permission to amend at any time not later than five days before the due process hearing begins.

The applicable timeline for a due process hearing under Part C shall recommence at the time the party files an

amended notice, including the timeline for a resolution session.

If the program has not sent a prior written notice under Part C of IDEA to the parent regarding the subject matter contained in the parent's due process complaint, the program must, within 10 days of receiving the due process complaint, send to the parent a response that includes:

1. An explanation of why the program proposed or refused to take the action raised in the due process complaint;
2. A description of other options that the IFSP Team considered and the reasons why those options were rejected;
3. A description of each evaluation procedure, assessment, record, or report the program used as the basis for the proposed or refused action; and
4. A description of the other factors that are relevant to the program's proposed or refused action.

A response by a program under this section shall not be construed to preclude the program from asserting that the parent's due process complaint was insufficient, where appropriate.

Except as provided above, the party receiving a due process complaint must, within 10 days of receiving the due process complaint, send to the other party a response that specifically addresses the issues raised in the due process complaint.

Subject to this section, a hearing officer must make a decision on substantive grounds based on a determination of whether the child and the child's family received appropriate early intervention services.

In matters alleging a procedural violation, a hearing officer may find that a child or a child's family did not receive appropriate early intervention services only if the procedural inadequacies:

1. Impeded the child and family's right to appropriate early intervention services;
2. Significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of appropriate early intervention to the child and the child's family; or
3. Caused a deprivation of early intervention benefit.

Nothing in this section shall be construed to preclude a hearing officer from ordering the program to comply with procedural requirements in this document.

Nothing in this section shall be construed to preclude a parent from filing a separate due process complaint on an issue separate from a due process complaint already filed.

The record of the hearing and the findings of fact and decisions must be provided at no cost to you.

The state Birth to 3 Connections program, after deleting any personally identifiable information, shall transmit the findings and decisions to the State Interagency Coordinating Council (SICC), and make those findings and decisions available to the public.

A decision made in a hearing is final, except that any party involved in the hearing may appeal the decision through civil action.

The state Birth to 3 Connections program shall ensure that not later than 45 days after the expiration of the 30 day period regarding a resolution session:

1. A final decision is reached in the hearing; and
2. A copy of the decision is mailed to each of the parties.

### **CIVIL ACTIONS**

Any party aggrieved by the findings or decisions made through the hearing process has the right to bring a civil action with respect to the complaint presented in the hearing. The action may be brought in any state court of

competent jurisdiction or in a district court of the United States without regard to the amount of controversy. The party, parent or program, bringing the action shall have 90 days from the date of the decision of the hearing officer to file a civil action, or, if the state has an explicit time limitation for bringing civil actions under Part C of the Act, in the time allowed by state law.

In any action brought under this section, the court:

1. Shall receive the records of the administrative proceedings;
2. Shall hear additional evidence at the request of a party ; and
3. Basing its decision on the preponderance of the evidence, shall grant the relief that the court determines to be appropriate.

The district courts of the United States have jurisdiction of actions brought under section 615 of the IDEA without regard to the amount in controversy. Nothing in this part

restricts or limits the rights, procedures, and remedies available under the Constitution, the Americans with Disabilities Act of 1990, Title V of the Rehabilitation Act of 1973, or other Federal laws protecting the rights of children with disabilities, except that before the filing of a civil action under these laws seeking relief that is also available under section 615 of the IDEA, the due process hearing procedures must be exhausted to the same extent as would be required had the action been brought under section 615 of the IDEA.